

TRANSPORTATION SECURITY ADMINISTRATION
TSA SECURE FLIGHT PROGRAM
PUBLIC MEETING

Thursday, September 20, 2007

Grand Hyatt Washington Hotel
1000 H Street, N.W.
Washington, D.C.

PARTICIPANTS

T S A:

Steve Sadler
Kip Hawley
Donald Hubicki
Paul Leyh
Mai Dinh
Peter Pietra
Kimberly Walton

INDUSTRY:

Edward Hasbrouck, The Identity Project
Justine Sproat, QANTAS
Dave Lotterer, RAA
Paul Ruden, ASTA
Bill Scannell, IDP
James Harrison, IDP
Barry Steinhel, ACLU
Ken Dunlap, IATA

1 The public comments will start at 10:00. We
2 will break at 12:30 for lunch and resume at
3 1:15 for more public comments. We will take
4 the afternoon break at 3:00 p.m., then at 3:15
5 we'll start with the public comments again.

6 So the first thing I would like to do
7 is introduce the panel members. Kip Hawley,
8 obviously the TSA Administrator; Don Hubicki,
9 the Director of the Secure Flight Program; Paul
10 Leyh, Deputy Director, Secure Flight; Mai Dinh,
11 Attorney Advisor from TSA Counsel; Peter
12 Pietra, who is the Director of the Privacy and
13 Policy and Compliance; and last is Kimberly
14 Walton, our special counselor.

15 So I would like to introduce Kip for
16 some opening comments.

17 MR. HAWLEY: Thank you, Steve. And,
18 good morning, everybody. Thank you for joining
19 us. We are here to discuss TSA's published
20 notice of proposed rulemaking for the Secure
21 Flight program. We want to hear from the
22 public and industry to get your feedback on the

1 changes TSA is proposing for aviation security.

2 A week ago our nation commemorated the sixth
3 anniversary of 911. The events of that day are
4 a stark reminder that we face an adaptive enemy
5 that has a continued appetite for attacking the
6 west. We are today in a heightened threat
7 environment and this threat is real.

8 As time passes for 911 it does not mean
9 the threat is fading. It means there is more
10 time available for preparation, for the
11 terrorists and for us. We have the
12 responsibility to use every moment that we have
13 to our best advantage. Since 911 we have taken
14 substantial steps to improve security. But we
15 still have more work to do. Particularly
16 because the enemy is continuing to adapt and
17 rebuilt itself. We must stay ahead of them by
18 enhancing our ability to stop people known to
19 us as posing serious terrorist risk.

20 TSA has begun to add another layer of
21 security in advance of Secure Flight. The
22 introduction of trained document verification,

1 TSOs at checkpoints. This will address a
2 current vulnerability to effective use of watch
3 lists. Secure Flight lets us identify in
4 advance potentially dangerous people who we
5 don't want to let through an airport or allow
6 on board an aircraft.

7 TSA's Secure Flight program implements
8 a key 911 Commission recommendation. TSA will
9 perform uniform watch list matching and
10 transmit the results back to aircraft
11 operators. As it stands now airlines are
12 responsible for checking domestic passenger
13 names against a terrorist watch list provided
14 by TSA. This leads to inconsistencies in how
15 the list is checked and maintained by the
16 airlines and it creates inefficiency and
17 frustration for travelers.

18 Under the proposed rule TSA will
19 receive limited passenger information from
20 airlines as early as 72 hours in advance of a
21 flight and we will continue to receive
22 information until the flight leaves. We will

1 check this information against the watch list
2 provided to us by the Terrorist Screening
3 Center and transmit the results back to
4 aircraft operators.

5 In the case of a watch list match we
6 will now have the time to coordinate
7 appropriate actions. For example, we can send
8 a person through secondary screening, notify
9 law enforcement to conduct an interview, or, if
10 necessary, prevent a person from boarding the
11 aircraft.

12 The practical security measure already
13 exists of checking airline passenger
14 information for matches against a terrorist
15 watch list. We are streamlining and improving
16 the process by taking on the responsibility at
17 TSA rather than giving it to dozens of
18 different air carries. The result is better
19 security, more consistent passenger process and
20 a reduction in potential misidentification.

21 In 2005 GAO and the Secure Flight
22 Working Group issued reports saying that more

1 needed to be don in terms of privacy and
2 program integrity for Secure Flight. In
3 February 2006, I testified before Congress that
4 we were going to rebaseline Secure Flight and
5 rebuild it from the ground up to address the
6 concerns addressed in the reports. That work
7 has been completed and now the implementing
8 rule is ready for public scrutiny and
9 discussion.

10 I am confident we have the team in
11 place to make Secure Flight a success. The
12 program team has been exceptionally transparent
13 about what we are doing. We have conducted
14 extensive stakeholder outreach, we have met
15 with aviation industry associations, and
16 privacy advocacy groups, and we've used their
17 feedback to help design this program. Their
18 feedback has been crucial, especially from a
19 privacy perspective and I appreciate the
20 working relationship that we have and the
21 constructive engagement that's gone on through
22 this process.

1 I would like to point out that Secure
2 Flight is a very focused program. It does not
3 use commercial data. It does not assign a
4 score based on risk. In addition, TSA does not
5 maintain the watch list. We receive the watch
6 list from the terror screening center at the
7 FBI.

8 While some say it's a difficult
9 balance, increasing security while protecting
10 individual privacy rights, I want to make very
11 clear that I believe that privacy and security
12 are essential ingredients of each other. The
13 program will not go forward without both
14 privacy and security needs baked into the
15 process.

16 The benefits of the program are many.
17 I starts with enhanced security for air
18 travelers. Secure Flight decreases the chance
19 of watch list data being compromised because of
20 the distribution of the list will be much more
21 limited. It creates one consistent process for
22 the passenger across all aircraft operators and

1 integrated redress process clears individuals
2 who believe they have been improperly delayed
3 or prohibited from boarding and aircraft
4 because of previous misidentification. This is
5 the DHS TRIP program. Secure Flight will
6 result in better security and create a more
7 consistent and uniform prescreening process for
8 passengers while reducing misidentification.
9 It is a win/win for all.

10 I look forward to hearing your input
11 through this public meeting process. For those
12 of you who would like to make comments or ask
13 questions, we've elected to go with five-minute
14 statements as opposed to three-minute or other
15 numbered statements to give more time for
16 people to express their view on this important
17 program.

18 We are also providing a live audio web
19 cast of this public hearing. It is available
20 now on our public web site at www.TSA.gov. We
21 have the Secure Flight senior program managers
22 and associated executives here in person today.

1 We have a strong team up here and we would be
2 very happy to listen to your comments and take
3 them on board during this rulemaking process.

4 So I thank you for your participation
5 and look forward to the discussion.

6 MR. SADLER: Okay. Thank you. Next
7 I'm going to introduce Don Hubicki, the
8 Director of the Secure Flight Program. He's
9 going to give a presentation about Secure
10 Flight as it's outlined in the NPRM.

11 MR. HUBICKI: Thank you, Steve. Good
12 morning, everyone. I would like to give a
13 little bit of a background on the Secure Flight
14 program before we walk into the comment part of
15 our agenda today. There are some slides here
16 that are being presented and I believe on the
17 web cast as well those slide are available this
18 morning.

19 Today the airlines are required to
20 check all reservations against the watch list.
21 With the Intelligence Reform Terrorism
22 Prevention Act, the requirement was a

1 Department of Homeland Security assumed that
2 function from the aircraft operators.
3 Additionally the 911 Commission as well made
4 those recommendations for that to take place.
5 Hence, TSA has developed a Secure Flight
6 program and we've begun the process by issuance
7 of the notice of proposed rulemaking which we
8 are here today to discuss.

9 (Slide shown.)

10 MR. HUBICKI: Under the Secure Flight
11 program TSA would do three things, receive
12 certain passenger and nontraveler information.
13 By "nontraveler information" we're referring
14 to individuals who wish to enter the sterile
15 area of an airport or beyond the checkpoint of
16 the airport perhaps for escorting minors to a
17 gate. Secure Flight program, the TSA would
18 also conduct the watch list matching function
19 for domestic and international flights. Then
20 Secure Flight would transmit the board pass
21 printing instructions back to the aircraft
22 operators based on those results.

1 (Slide shown.)

2 MR. HUBICKI: First and foremost the
3 mission for Secure Flight is security. It's a
4 security program and hence the emphasis. The
5 goals on Secure Flight are to identify known
6 and suspected terrorists by doing the name
7 matching against the watch list to prevent
8 individuals on the "no-fly" list from boarding
9 aircraft, to direct those individuals that are
10 on the selectee list to go through the enhanced
11 screening process at the airports. Secure
12 Flight is also designed to facilitate passenger
13 air travel and to help protect the individual's
14 privacy rights as Kip mentioned earlier.

15 (Slide shown.)

16 MR. HUBICKI: The scope for the Secure
17 Flight program covers several areas. It covers
18 domestic travel, international travel,
19 international which includes over-flights over
20 continental United States. It also includes
21 international point-to-point travel between two
22 international points covered by U.S. aircraft

1 operators. All passengers traveling on covered
2 aircraft operator flights are going to be
3 matched against the watch list prior to
4 receiving the boarding gate pass. At full
5 capacity our estimates based on projections are
6 around 2.5 million passengers per day. TSA
7 would conduct this watch list matching process
8 also for the nontraveling individuals as I
9 mentioned earlier, folks needing access to a
10 sterile area at the airport.

11 (Slide shown.)

12 MR. HUBICKI: The benefits of Secure
13 Flight as designed to raise the baseline
14 standard in terms of the algorithms, technology
15 and automation used in the watch list matching
16 process. Today these lists are distributed to
17 hundreds of airlines. One of the benefits of
18 Secure Flight is to also decrease the chance
19 for compromised watch list data by limiting
20 that distribution in the future. With the 72-
21 hour provision that's in the notice of proposed
22 rulemaking which we can discuss and talk about

1 shortly, that will help expedite law
2 enforcement notification by gaining earlier
3 insight to potential matches. Through the
4 consolidation of this function within TSA
5 within Secure Flight the intent is to provide
6 fair, equitable, and consistent watch list
7 matching across all aircraft operators. And
8 also in the redress process, through this
9 consolidation, expediting, integrating the
10 redress process for misidentified passengers.

11 (Slide shown.)

12 MR. HUBICKI: This slide gives a high-
13 level overview for the business process for
14 Secure Flight. There are four main areas, the
15 passengers, the airlines, the DHS TRIP program
16 in terms of redress and the DHS Secure Flight
17 program. The intent here is for the passengers
18 when they book reservations and provide
19 information to the airlines the airlines would
20 forward a limited set of passenger information
21 to Secure Flight in order for Secure Flight to
22 then perform the watch list matching function.

1 In doing so Secure Flight would look to the
2 DHS TRIP program in order to identify anyone
3 who has been cleared through the redress
4 process and through a process from other
5 cleared lists. Those results would go back to
6 the airlines. The airlines would then, based
7 on those results, an individual who would be
8 cleared and they could issue a boarding pass,
9 an individual may be identified as on the "no-
10 fly" list and the boarding pass would be
11 inhibited or they could be identified as a
12 selectee to go through the enhanced screening
13 at the airport.

14 In terms of the data items that a
15 passenger would provide to the airline and
16 hence the airline would provide to Secure
17 Flight in the course of booking a reservation,
18 the required data that would come to Secure
19 Flight would be the passenger's full name and
20 the itinerary information. That would be the
21 minimal information in order to Secure Flight
22 to do the name matching process against the

1 watch list.

2 Additionally, under this notice of
3 proposed rulemaking, we are seeking the
4 industry to include the ability for individuals
5 booking tickets to be able to put in some
6 additional data items, date of birth, gender,
7 and redress number. This would then provide
8 the ability for travelers to forward that
9 information along to Secure Flight in order to
10 enhance the name matching process. It's not a
11 requirement for a traveler to input that
12 information, but through this notice of
13 proposed rulemaking, we are seeking to have
14 that capability within the reservation industry
15 to allow individuals to do so if they wish.

16 The intent here is to help facilitate
17 for those people who may have been potential
18 matches against the list based on their name
19 only. They now have an opportunity to add
20 additional information, date of birth, gender,
21 or redress number in order to minimize
22 inconvenience at the airport.

1 (Slide shown.)

2 MR. HUBICKI: The redress inquiry
3 program known as TRIP is the redress process
4 that Secure Flight would use in order to
5 provide redress to those individuals who
6 believe they have been improperly or unfairly
7 delayed or prohibited from boarding and
8 aircraft.

9 The DHS TRIP process was developed to
10 provide an essential gateway for these
11 individuals to provide information to DHS.
12 Secure Flight would receive back from the DHS
13 TRIP process the cleared list which is what we
14 would use to augment or supplement the secure
15 flight name matching process.

16 (Slide shown.)

17 MR. HUBICKI: I would like to point out
18 on the next couple of slides some of the areas
19 in the Code of Federal Regulation that is being
20 added or amended with this notice of proposed
21 rulemaking. Specifically we are adding Part
22 1560 which addresses the Secure Flight program.

1 1560.1 addresses the scope, purpose and
2 implementation of Secure Flight. 1560.3
3 addresses the terms that are used in this
4 1560.101 covers the requirement that covered
5 aircraft operators request passenger
6 information and nontraveler information and
7 transmit such to TSA. Specifically 1560.103
8 covers the requirement for covered aircraft
9 operators to provide on their web sites privacy
10 notices that explain the use of this
11 information.

12 (Slide shown.)

13 MR. HUBICKI: 1560.105 covers the
14 process of denial of transport or sterile area
15 access and designation for enhanced screening.
16 1560.107 addresses the limits for the use of
17 watch list matching results by covered aircraft
18 operators. 1560.109 addresses procedures for
19 submission approval and modification of the
20 aircraft operator implementation plans with
21 respect to Secure Flight. 1560.201, 203, 205,
22 and 207 cover the redress procedures for

1 individuals.

2 (Slide shown.)

3 MR. HUBICKI: In addition to part 1560
4 which addresses Secure Flight specifically
5 there's also amendment to part 1540 in the
6 Civil Aviation Security General rules where
7 we've added 1540.107(a) which concerns the
8 screening process for passengers; 1540.107(b)
9 which provides that individuals must provide
10 his or her full name when making reservations
11 for a covered flight; and 1540.107 prohibiting
12 individuals from boarding who fail to present
13 verifying identification for those who are
14 directed to the ticket counters for attention
15 in that manner.

16 (Slide shown.)

17 MR. HUBICKI: And on the next slide
18 there's also some amendments to part 1544
19 aircraft operator security, air carriers and
20 commercial operators. In this case we've added
21 1544.103(c)(22) to make the aircraft operator
22 implementation plan part of the security

1 programs in place today.

2 (Slide shown.)

3 MR. HUBICKI: Let me move on and take a
4 minute to just explain the implementation
5 approach for Secure Flight as well. We are
6 going through the process now which is why we
7 are all here in terms of the notice of proposed
8 rulemaking and soliciting and taking an input
9 and comment from folks in the industry and the
10 public. And we'll go through the process then
11 to finalize the rule that addresses Secure
12 Flight. We then move into a phase in terms of
13 the airline implementation plans and working
14 with the airlines to finalize the details of
15 implementation. The intent is to go through a
16 parallel operations phase for the program in
17 order to fully complete any testing of -- not
18 just the technology, but the operations aspect
19 and all of the interactions with the airline
20 industry. And then we move into the final
21 phase of actual cutovers where the results from
22 Secure Flight then drive the boarding pass

1 process and drive the final results in the
2 process.

3 Throughout that implementation, those
4 phases and that approach there are many, many
5 aspects and pieces of testing that will happen
6 along the way. The benchmark testing where we
7 want to do lots of work to test results of
8 Secure Flight versus common practices today in
9 the industry and benchmark the performance of
10 the name matching engines, system testing, and
11 connectivity testing, a lot of technical
12 testing in terms of system performance,
13 interfaces, all those kinds of things, lots of
14 operational testing being planned for as well
15 in terms of the interaction with the airline
16 industry and how this is all going to work.
17 And then verification testing as we get into
18 the final phases and actually begin the cutover
19 process and verifying that things are working
20 as planned. Then throughout this entire
21 process our intent is to continue to maintain
22 transparency as Kip mentioned earlier with

1 stakeholders in the industry, in the public,
2 through ongoing communications and a lot of
3 attention to training as well and whatever we
4 have to do to help and assist in the area of
5 training on the operations under the future
6 program.

7 (Slide shown.)

8 MR. HUBICKI: So the purpose of today,
9 the purpose of the notice of proposed
10 rulemaking is to seek comment. We are seeking
11 comment in all areas in the notice of proposed
12 rulemaking. We invite comment, suggestions and
13 ideas from folks in all areas of what's been
14 outlined. There's particular areas of interest
15 that, you know, we've noted some things on here
16 that we've heard from some people through the
17 last several months in terms of the program
18 that we invite further comment on, further
19 suggestions, ideas, detailed information being
20 forwarded to us. Whether that has to do with
21 the over flights, the data elements, the 72-
22 hour data transmission requirement, watch list

1 matching and boarding pass printing procedures,
2 handling the international multi-leg boarding
3 pass issuance process, data retention rules.
4 There's a requirement in the notice of proposed
5 rulemaking for the placement of a code such as
6 a bar code on boarding passes to assist with
7 document verification, proposed privacy notice
8 requirements, compliance schedule, estimated
9 compliance costs. The point of this list is
10 not to be all-encompassing. Again, we are
11 looking at soliciting feedback in all areas on
12 the notice of proposed rulemaking.

13 With that I am going to turn it back
14 over to Steve to walk through some of the
15 specifics with regards to how individuals can
16 submit comments and then how we will conduct
17 the rest of today in terms of verbal comments
18 here this morning.

19 MR. SADLER: Good, thanks, Don. As far
20 as submitting your comments, you can submit
21 them electronically to the document management
22 system web site at DMS.DOT.gov and you can do

1 this until September 27th at 5 p.m. Then there
2 is going to be a change in the web site. They
3 are going to change it to www.regulations.gov
4 and that will become active on October 1st.

5 By U.S. mail or in person or by courier
6 the address will remain the same, that is not
7 going to change, at U.S. DOT Docket Operations,
8 M as in Mike -30, West Building, Ground Floor,
9 Room W12-140, 1200 New Jersey Avenue, S.E.,
10 Washington, D.C. 20590. The fax number will
11 not change, that's at 202-493-2251. Please
12 make sure that when you send your comments in
13 you send them to the appropriate docket which
14 is docket number TSA200728572 and the deadline
15 for submitting comments is October 22nd, 2007.

16 Now, until September 27th you can view
17 the comments on the docket at the original web
18 site the DMS.DOT.gov and then starting October
19 1st you can view them on the new web site which
20 is the www.regulations.gov.

21 Just a few notes about making your
22 comments, your comments here at the table. If

1 you wish to make a comment, please make sure
2 that you're registered at the front desk and
3 you have a number because we're going to do it
4 by number. And I'll call those numbers out
5 after a person is done making their comments
6 here at the meeting.

7 So obviously if you could come up and
8 queue up over here where the chairs are as
9 somebody is making their comment that will
10 expedite the process. Because it's important
11 for us to hear your comments. We want to make
12 sure everybody gets a chance to make their
13 comments here today publicly.

14 Also, when you make your comments,
15 please make sure you state your name and your
16 affiliation before you start the comments. And
17 all your comments are going to be posted in the
18 public docket for the Secure Flight NPRM. We
19 would ask you to remember not to use any
20 sensitive security information in your
21 comments. We would also ask you to remember
22 the five-minute time limit. It's important

1 that we be courteous to other people who want
2 to speak. So please try to keep your comments
3 to the five minutes. We will keep track of
4 your time on the screen up here. So I believe
5 that the time is going to flash every 15
6 seconds in the last minute. There will be an
7 audio reminder at one minute, when you have one
8 minute left. There will be another audio
9 reminder when you've used your time up.

10 If you have any questions during the
11 course of the day there's TSA staff around the
12 room here, you can ask them. As far as the
13 panel goes, the panel is here to listen. They
14 are also going to ask you questions to clarify
15 your comments. So if you make a comment there
16 might be some back and forth. And they're also
17 here to answer questions about the Secure
18 Flight NPRM.

19 So, with that, let me just go over the
20 agenda once more. Obviously we are going to
21 start the comment period now. We're going to
22 take our lunch break at 12:30. We will resume

1 at 1:15. We will take another break at 3:00,
2 and then we will resume at 3:15. So if
3 everybody is ready.

4 MS. DINH: I just wanted to make one
5 comment about the transition of the docket.
6 When you go to the old docket after the
7 transition there will be a message on that web
8 page explaining how to file a comment in the
9 new docket. Also, TSA is going to publish a
10 notice in the Federal Register explaining the
11 transition and how it would all work. So if
12 you don't get a chance to take all the notes
13 that you need to take today, you can always go
14 to the TSA web site as well as the Federal
15 Register when the notice is published to get
16 instructions on how to file the comments during
17 the transition and afterwards. Thank you.

18 MR. SADLER: Okay. Thank you. So with
19 that, commenter number one, please come up to
20 the table. And please remember to state your
21 name and affiliation.

22 MR. HASBROUCK: My name is Edward

1 Hasbrouck. I have more than 15 years of travel
2 industry experience with airline reservations.
3 I'm an author, consumer advocate and consultant
4 to the Identity Project.

5 The starting point for this rulemaking
6 should be the first amendment right of the
7 people to assemble and Article 12 of the
8 International Covenant on Civil and Political
9 Rights which sets the standard for the right to
10 freedom of movement. As a treaty to which the
11 U.S. is a party the ICCPR takes precedence over
12 federal statutes and has also been given effect
13 through the Airline Deregulation Act of 1978
14 which requires the TSA to consider the public
15 right of freedom of transit, a right defined by
16 the ICCPR.

17 All federal agencies have been ordered
18 by presidential directive to act in accordance
19 with the ICCPR. The government of the U.S. in
20 its reports on compliance with the ICCPR has
21 certified that all such agencies do in fact
22 consider the ICCPR in relevant rulemakings as

1 the TSA has entirely failed to do in this case.

2 The central defect of this proposal is
3 the TSA's failure to recognize that freedom of
4 assembly and movement are rights. I and the
5 Identity Project will address this in more
6 detail in our written comments. But an
7 analysis of the impact of the proposed rules on
8 those rights must be conducted before any rules
9 are finalized.

10 The core of the proposed rule obscured
11 by the euphemistic language of screening is a
12 two-fold requirement for would-be air travelers
13 to obtain permission from the government before
14 they can travel. First they would have to
15 obtain a government-issued travel document.
16 Nothing in the proposed rules or any other
17 federal regulation entitles anyone to such a
18 document. Passports and driver's licenses, for
19 example, can be withheld for many reasons that
20 do not constitute grounds for denial of freedom
21 of movement. But under the proposal, if no
22 government agency chooses to issue you with

1 such a credential or if you don't qualify for
2 one, you can't fly. If you don't already have
3 such a document obtaining one can take a month
4 or more during which time you can't fly.

5 Second, airlines, common carriers,
6 required by law to transport all passengers
7 would be forbidden to allow anyone to board a
8 flight unless and until the airline requests
9 and receives explicit per-flight, per-passenger
10 permission in the form of a clearance or
11 matching message.

12 These requirements would be enforced
13 through a rule requiring would-be travelers on
14 demand to display identity documents and
15 provide information to private, unregulated,
16 commercial third-parties, the airlines. The
17 certainty that airlines will retain all of this
18 information in perpetuity in order to maximize
19 the marketing value of the government-coerced
20 informational windfall renders meaningless any
21 restrictions on which of this data is retained
22 or for how long by the government itself.

1 In the absence of any restrictions on
2 the use or retention of this data by airlines,
3 the data involuntarily obtained from travelers
4 will become the sole legal property of the
5 airlines which they could keep forever, use,
6 sell, or share with anyone, anywhere for any
7 purpose.

8 The proposal would require would-be
9 travelers to display their ID whenever the TSA
10 orders. But since the orders will be given to
11 the airlines in secret, members of the public
12 will have no way to verify whether a demand for
13 ID or refusal of transportation is actually
14 based on government orders. And since the TSA
15 refuses to say how travelers can verify the
16 bona fides of people who demand ID in airports,
17 the proposed rules would leave travelers at the
18 mercy of any identity thief who claims to be an
19 airline contractor.

20 Many travelers are self-employed
21 freelancers and sole proprietors and the
22 proposal would have a significant financial

1 impact on a substantial number of these
2 individual small economic entities who have to
3 delay air travel until they can obtain
4 prerequisite documents or unable to travel
5 because they don't qualify for any acceptable
6 documents or don't receive clearance to board
7 flights.

8 The costs of the proposal would also
9 include the value of their lost liberties and
10 the billions of dollars worth of informational
11 property they would be forced to give to
12 airlines. The proposed rules don't say who
13 would make the decisions of whether or not to
14 issue travel documents or grant permission to
15 board, what criteria or procedures they would
16 use in making those decisions, or how those
17 denied travel documents or denied permission to
18 board a flight will be able to obtain judicial
19 review of decisions to deny them their rights
20 of assembly and movement. They fail to satisfy
21 any of the criteria established by the ICCPR
22 for administrative regulations burdening

1 freedom of movement.

2 The TSA should withdraw the proposed
3 rules entirely. Instead of making decisions by
4 secret, unreviewable, administrative fiat about
5 whether to allow us to exercise our rights, why
6 not give existing legal processes a try? If
7 you want to obtain information ask a judge for
8 a warrant or a subpoena. If you think you have
9 sufficient information to justify an order
10 restricting someone's liberty submit it to a
11 judge with a motion for a restraining order or
12 an injunction.

13 Thank you.

14 MR. SADLER: Thank you, sir.

15 MR. HAWLEY: I have a question. I
16 think that was a very clear statement and I
17 thank you for that. I didn't get the point
18 about the small entities. So in about two-
19 thirds of the way through you were talking
20 about the small entities and I missed that
21 point.

22 MR. HASBROUCK: Yes, sir. The

1 Regulatory Flexibility Act requires an analysis
2 of the impact of a proposed rule on small
3 economic entities when it would have a
4 significant impact on a substantial number of
5 such entities. The NPRM claims falsely that
6 this would not because it fails to consider
7 among other things the fact that sole
8 proprietors as the TSA itself has conceded in
9 several previous rulemakings in response to our
10 comments that sole proprietors are small
11 economic entities. So if a sole proprietor or
12 a freelancer has to delay their travel because
13 they don't have documents or is unable to
14 travel and is economically impacted by that,
15 that triggers the requirement of the Regulatory
16 Flexibility Act not yet addressed in the
17 proposed rules for an analysis of the impact on
18 small economic entities. That needs to be
19 published and a new comment period on it
20 allowed before any rule could be finalized.

21 MR. HAWLEY: Thank you. I got it now.

22 MR. HASBROUCK: All right.

1 MR. HAWLEY: Thanks.

2 MR. SADLER: Any other questions?

3 (No response.)

4 MR. SADLER: All set. Well, thank you,
5 sir, we appreciate it.

6 Speaker number two. Is there a speaker
7 number two?

8 (No response.)

9 MR. SADLER: Speaker number three.

10 Again, please state your name and
11 affiliation. Thank you.

12 MR. LOTTERER: Good morning. I'm Dave
13 Lotterer with the Regional Airline Association.
14 I have really quite a few questions, so I'm not
15 sure if I can get them all in five minutes.
16 I'll start with the bigger ones. One, the
17 proposed compliance period. We think that's
18 just too short, the 60 days. We think it
19 should be at least a year. One of the reasons,
20 we have several smaller airline members that
21 really haven't done EPAS. They don't do
22 international travel. So the computerized

1 system needed to support this activity
2 certainly isn't in place. And we have a
3 current system now with the airlines, so the
4 period -- the one-year period is not at risk
5 because we have an equivalent system in place.

6 The other issues, the issue about the
7 one boarding pass, that one is really of real
8 concern to us. The air carries have, of
9 course, invested considerably in an Internet
10 system that allows passengers to print their
11 own boarding passes. And for us to tell them
12 now that they can only print one pass is going
13 to really severely impair our customer service
14 here. You can have issues where the computer
15 doesn't work. How many times has that happened
16 to us? Issues where they leave it at home,
17 they have to redo it. There's a lot of
18 confusion about the one boarding pass issue
19 that you have here.

20 And to me, the biggest issue is really
21 the 72-hour window before departure. The
22 process that you described in the preamble

1 really to me is not sufficient. You describe
2 it saying that reservations made within 72
3 hours of scheduled flight departure time
4 operators are required to transmit data as soon
5 as possible. The preamble states that the TSA
6 will notify the operator that check-in and
7 boarding pass issuance can proceed normally.
8 And then nothing further describes how TSA will
9 provide the results other than to describe the
10 matching process as fully automated. Does this
11 really mean that there are no human
12 interventions in there? You go on to state
13 that the operator will need to call TSA. In
14 other words, if he's in a bind trying to get
15 this passenger on board. This to us is really
16 quite impractical. We just don't see how this
17 can take place.

18 And I guess what I'm suggesting, and I
19 haven't really run this by all of our member
20 carriers, but to provide for an option, you're
21 in effect putting the government into the
22 business process of having passengers denied

1 boarding at the last minute. And I guess the
2 airlines -- I would think all of the airlines
3 would be very nervous about a government entity
4 so intimately involved in their business
5 process of getting customers on board their
6 airlines. We would like to have some
7 satisfaction.

8 Maybe in a public meeting you can't go
9 into details, but right now we feel very uneasy
10 about how this process will take place. I can
11 see I have two more minutes.

12 Some of the issues too, like what about
13 if you have a snow cancellation that you have
14 to reboard people? What is the process there?
15 Do you have to resubmit those people simply
16 because they're getting on another flight?
17 That wouldn't make sense from a security risk
18 standpoint.

19 I guess another issue that I would like
20 you to consider is, I mean, if a terrorist if
21 he -- and this is a public docket and the 72-
22 hour window is publicly available to everybody,

1 so a terrorist, why would he ever try to make a
2 reservation before the 72-hour window? To me
3 the 72-hour window before departure is when all
4 the action will take place with respect to
5 potential terrorist activities going on. And
6 you put too much emphasis on what you're going
7 to do 72-hours prior to the boarding. To me,
8 the real action that you guys have is what's
9 going on 72 hours before flight. And I just
10 don't see that process as efficient.

11 MR. HUBICKI: Before you step away one
12 question and then I would also add a couple of
13 comments. In terms of the concern about the
14 compliance period of 60 days and the feeling
15 that it needs to be one year, could you
16 elaborate a little bit in terms of what you
17 might consider from your perspective the long
18 haul and intent, if you will, in terms of what
19 activities on the airline side perhaps might be
20 the problem there?

21 MR. LOTTERER: Well, reservation for
22 the regional carriers is largely done by the

1 large carriers, the co-chair process. But we
2 do have a number of carriers that don't --
3 aren't involved in EPAs. That basically their
4 computer system they're going to have to really
5 rework that system quite extensively at
6 considerable cost in order to match it to your
7 process. And I'm just very concerned. I don't
8 have numbers now and I'll get back with the
9 membership. But I threw out the one year. I
10 think what's available now is that you do have
11 a current system in place that's doing the
12 equivalent of this. And while there is some
13 criticism on it from a security standpoint, it
14 is working. So to me your risk within a one-
15 year window is not that great compared to a 60-
16 day window where you're going to impose
17 additional costs in order to expedite something
18 and not only the cost but also the problems of
19 doing something too quickly. To me it just
20 isn't worth the effort to do it that quickly.

21 MR. HUBICKI: Okay. Thank you for that
22 elaboration. I guess just to provide a little

1 bit more insight regarding the 72-hour window
2 as well and we look for more detailed comments
3 from you, you know, going forward in writing
4 back to TSA. You know, clearly we want to make
5 sure that in fact we have sufficient time so
6 that we can complete whatever automated name
7 matching process that needs to take place so
8 that we can respond back well within or before
9 the 24-hour period at which point in time
10 people might want to print their boarding
11 passes out at home. So part of the 72-hour
12 time table is to make sure that we can
13 accommodate that so that we don't impact
14 travelers in the industry in terms of people
15 wanting to do that to facilitate efficient
16 travel. So that's important.

17 Also, because it's a security program,
18 the sooner that some of the data is provided
19 does provide us that enhanced capability as
20 well. So some of the reasons for the 72-hour
21 period of time. In addition that there's the
22 72-hour period for advance reservations.

1 Secure Flight also does provide for and
2 accommodate for those people who will book
3 reservations within 72 hours all the way up to
4 folks who will book shuttle tickets last minute
5 to board a flight. So there will be an
6 interactive capability with Secure Flight as
7 well to accommodate those kinds of situations.

8 That is envisioned and covered in the program.

9 And your point understood in terms of
10 there has to be an operations element to Secure
11 Flight and to Secure Flight working perhaps
12 with the air carriers in terms of those folks
13 who last minute are potential matches against
14 the watch list and therefore there does need to
15 be a resolution for those individuals. So
16 there does need to be an operations process.
17 And part of our -- I mentioned earlier the
18 parallel operations and how we tend to do lots
19 of different aspects of testing through the
20 life of the program implementation. And
21 through parallel operations we hope to make
22 sure we perfect those kinds of operations. So

1 I would just add those points as well.

2 But I think your comments, clearly we
3 would look to see more details in your
4 submission to us so we can, you know, better
5 understand them and better respond to them or
6 take appropriate action if we need to modify
7 something.

8 MR. LOTTERER: If I can comment. I
9 think what you might be able to do is to have
10 the current system remain in place such that if
11 the airline doesn't hear from you that they can
12 still review their system -- they can use their
13 system to check this person out and still get
14 that person on board. And one of the big
15 issues that I didn't have time for is redress.

16 I mean, if a person's flight is cancelled, you
17 have a redress process that looks into their
18 legal rights. But in terms of the cost to
19 basically put that person up for a hotel to get
20 him on another flight that might be more
21 expensive, all of those cost issues, I assume,
22 are going to be borne by the airline in this

1 process. It's going to be a security delay.
2 So this is something possibly new. And we're
3 spending billions of dollars on operating
4 efficiency issues for the future, but if we see
5 an increase in security delays, there's going
6 to be a lot of issues that are going to come as
7 a result of that.

8 Thank you.

9 MR. SADLER: Okay. Thank you very
10 much.

11 Speaker number four, please?

12 MR. RUDEN: Good morning. My name is
13 Paul Ruden. I represent the American Society
14 of Travel Agents. I had not intended to speak
15 this morning, but having scored number four, I
16 can't the opportunity to make a few remarks.

17 We've been working for years with
18 representatives of TSA on the Secure Flight
19 program and have appreciated the interaction
20 and the candor that has been shown in
21 explaining and discussing these issues. And in
22 general we are very supportive of the

1 underlying proposition of shifting
2 responsibility for the matching program from
3 the airlines to the government. We have,
4 however, asked that the development of these
5 rules abide by a fundamental principle which is
6 to the maximum extent possible not to create a
7 system of rules that conflicts with the way
8 business is done today. Failure to abide by
9 that principle is going to impose upon the
10 retail sector of this industry huge additional
11 unfunded costs that cannot be recovered from
12 consumers or any other way. By and large, I
13 think the proposal that's on the table in the
14 NPRM does comply with that criterion and we
15 hope that that will be maintained.

16 It is, however, still unclear to us how
17 the data the travel agents will end up
18 collecting -- because they are the front-line
19 sales force for most of the people who end up
20 on airplanes -- how that data is going to be
21 passed from the GDS systems, how it will be
22 recorded in there, first, and then passed from

1 them to the airlines to the government. I
2 don't know the extent to which you have been in
3 interaction with the GDSes, but my impression
4 is that there's a gap here that is not being
5 addressed and it is fundamental to the way
6 business is operated and to the industry's
7 ability to comply with these rules that we have
8 clear, specific instructions to the retail
9 distribution system and, of course, to
10 consumers operating on their own as well as to
11 where this data is going to go, what format
12 it's going to be in. We've argued for a single
13 format, for example, for date of birth. The
14 fact that that's an optional piece of
15 information does not relieve or remove the
16 importance of having a single format for that
17 information to be input.

18 There is some concern about the impact
19 of the rules mentioned earlier on early check
20 in, on-line check in which many, many consumers
21 use today as a convenience. It's unclear to me
22 at the moment. I confess, I've not absorbed

1 every detail of the NPRM, but it's unclear what
2 impact this is going to have on that process.
3 If it's going to eliminate it or fundamentally
4 change it, it's going to create a new set of
5 unrecovered costs.

6 I would say also that you have an issue
7 about the formatting of the gender item. It's
8 easy enough to say produce that information,
9 but -- and I don't have any expertise in the
10 subject, but we need to have a clear and
11 specific and unvarying format for that
12 information to be input so that people don't
13 just make up terminology of their own and end
14 up having customers go through unexpected
15 secondary and tertiary screening at the
16 airport, because the information you were
17 expecting to get really didn't get provided.

18 Most important of all perhaps, whatever
19 the rule ends up saying, and obviously there
20 are going to be many, many comments that will
21 have to be digested by all of us is the issue
22 that was raised a moment ago which is most

1 fundamental. How much time is the industry
2 going to have to adapt its business processes
3 to whatever rule you end up finalizing?

4 In the travel agency industry which I
5 focus on a lot of the information about
6 customers, especially on the corporate side is
7 already in place in computerized profiles. The
8 travel management companies that specialize in
9 this business and do hundreds of billions of
10 dollars of this business a year in air alone
11 have invested huge sums in creating systems to
12 keep that information on file so that it could
13 be entered automatically in PNRs and make the
14 booking process as efficient as possible.
15 Those profiles are going to have to be changed.
16 Maybe there will be new programming
17 requirements to accommodate this new
18 information because we don't generally collect
19 people's date of birth today. And the issue
20 of coordination between the GDS systems and
21 travel agency back office systems where this
22 information resides is also a huge cost

1 question. So, this cannot be accomplished in
2 60 days. This is a huge cost the industry is
3 going to have to bear and it simply can't be
4 done in 60 days. And it's going to make the
5 cost even larger if you do not allow enough
6 time for the industry to figure out how to do
7 that is in the most efficient way possible.

8 Time is up. Thank you very much.

9 MR. SADLER: Does anybody have any
10 questions or comments?

11 MR. HUBICKI: Not a question, but I
12 guess I just would add one thing that I think
13 your comments reminded me that I don't think we
14 mentioned earlier and talked about that I think
15 is helpful to understand. We at TSA have done
16 a lot of work with folks in CBP, Customs and
17 Boarder Protection, as well as they have
18 similar programs on the international side and
19 have done a lot to try to consolidate the
20 technical aspects or requirements or designs of
21 Secure Flight with what they have as well and
22 communicate that with the air carriers. The

1 intent being that we, by consolidating and
2 harmonizing, if you will, some of the specific
3 formats for date of birth and how we transmit
4 the data. For example, we don't intend to
5 build a redundant network with air carriers.
6 We intend to use the communications and
7 infrastructure already in place today for
8 transmission of data for other purposes to CBP.

9 So, you know, I think as we look for
10 your comments further on this, you know, I
11 would point out that in fact through some of
12 that harmonization some of those details have
13 been thought through in order to provide for
14 some consistency in formats and to try to
15 leverage some things that are in place.

16 The other point would be that hopefully
17 that will minimize in terms of the amount of
18 time required because we are trying not to
19 reinvent the wheel in terms of some of the --
20 are leveraging some of the work that's already
21 being done.

22 MR. RUDEN: I appreciate those

1 thoughts. We certainly will file written
2 comments. I do want to emphasize though, the
3 airlines don't own the GDS systems. They are
4 completely independent businesses. And
5 whatever the airlines may be saying about what
6 they need and what they can accommodate to and
7 how fast they can do it does not represent
8 necessarily the GDS point of view. And today
9 while the Internet is accounting for a larger
10 and larger share of travel agency bookings that
11 are made sort of outside the historical system,
12 the reality is that GDSes are still the core of
13 the system. They are going to remain the core
14 of that system for a long, long time to come,
15 probably forever, as long as retail
16 distribution -- independent retail distribution
17 exists. So the problem of what do you put in,
18 what format is it in and how is all that going
19 to work in context with corporate travel
20 programs, profiles, and all the rest is still
21 very much an open question and one we are
22 gravely concerned about. Because the cost to

1 the industry will be huge if this requires a
2 redo of all of those systems. And if it does
3 require that or even a partial redo, that's
4 going to take a long time. You just can't do
5 it in 60 days. You may not even be able to do
6 it in six months. It could take a year.

7 Thank you very much.

8 MR. SADLER: Thank you. Speaker number
9 five, please.

10 MR. SCANNELL: Good morning. My name
11 is Bill Scannell. I'm a Bostonian by birth and
12 I'm Alaskan by choice. I'm communications
13 director for the Identity project and I've
14 spent the past four and a half years watching
15 the Department of Homeland Security put forward
16 iteration after iteration of some sort of air
17 surveillance pasture program. First it was
18 called CAPS II where a lot of data was
19 illegally transferred -- secretly transferred.
20 People's Social Security numbers were put up
21 on the Internet. We saw various iterations of
22 Secure Flight and one by one they went down the

1 tubes. Why? Because it's just not right.
2 It's just simply not right.

3 Osama Bin Laden is not going to be
4 sitting in row 15F eating a special meal flying
5 under his own name. The very idea or the very
6 concept that Dr. Evil is going to be using a
7 real name with his real ID is the big flaw in
8 your entire security plan.

9 The other big flaw is something called
10 the Constitution. The very concept that we
11 need to get government permission in order to
12 travel in our own country is deeply offense.
13 And you all really quite rightly should be
14 ashamed of yourselves that you sit up here and
15 you continue to push these things because you
16 don't make us any safer, you don't do anything
17 for our security, and all you do is ratchet up
18 the level of fear and make our country a lot
19 less free.

20 The latest example of this, Mr. Hawley,
21 would be the results of the Privacy Act
22 requests that we did on the automated targeting

1 system. You may recall that this was a
2 hitherto secret, yet another secret, Homeland
3 Security Program monitoring the flights and
4 travels of American citizens. You keep track
5 of people's race. You keep track of what
6 people read. You keep track of the names and
7 telephone numbers of friends and family. This
8 is repulsive. And a lot of this information is
9 coming straight out of the reservation systems,
10 out of the GDSes. The same well will you be
11 pulling information for Secure Flight.

12 MR. HUBICKI: This won't count on your
13 time, but just to correct that.

14 MR. SCANNELL: Sure.

15 MR. HUBICKI: We do not. That is not
16 TSA. It's very important that everybody
17 understands the record. We can talk about this
18 when your time expires and we have an exchange.

19 MR. SCANNELL: Pleasure.

20 MR. HAWLEY: But that is not a TSA
21 function. None of that information comes to
22 TSA; none. And none of that is anywhere near

1 Secure Flight. Totally separate project. I
2 take your point, but just for clarification,
3 factually, TSA has nothing, zero, to do with
4 that program. And when you were saying, "you
5 get this, you get that" I would like to have
6 for the record that TSA does not -- it doesn't
7 undermine the validity of the point you're
8 making, just in terms of the factual record,
9 that does not happen to involve TSA.

10 MR. SCANNELL: And, sir, with due
11 respect, as I'm sure you can understand when we
12 look at whether it be the idiocy of quart
13 baggies to taking shoes off, to mothers
14 drinking breast milk, to illegal data transfers
15 and secret data transfer, you can understand
16 that from my perspective, sir, after four and a
17 half years of actively working to stop your
18 department from doing this that when you tell
19 me this your credibility is around zero and I
20 hope that you respect that I would see it that
21 way.

22 I hope that you can also understand

1 that when we look at the global reservation
2 systems that that is one big well where all of
3 this information is coming out of. That you
4 may put your TSA Secure Flight bottling plant
5 next to this well, that you may put your ATS or
6 your APIS bottling plant on the well, but it's
7 the same water. You may be putting it in
8 different bottles, but it's the same water
9 coming out of the same well, going into the
10 same department. And this is wrong. Let's
11 talk about a sane security program, sir. What
12 about I realize that this will cost you and
13 your contractor friends a lot of money, but why
14 not simply check people for weapons and
15 explosives when they show up at the airport.
16 If they don't have them, let them board. When
17 they check their bags, let's make sure that
18 there's nothing in that bag that causes a
19 danger to the flight. And if that's okay,
20 well, let's let the bags on too. And what
21 about cargo? If the cargo is safe, let's let
22 that on too.

1 I don't understand what someone's
2 identity or anything has to do with any of
3 this, sir. And, again, I'm embarrassed for all
4 of you. Thank you.

5 MR. HAWLEY: Before you go, thank you
6 for your statement, I do respect the point of
7 view that you expressed. You may not have been
8 here at the opening --

9 MR. SCANNELL: I was.

10 MR. HAWLEY: -- when I indicated that
11 we had a number of outside reports, Secure
12 Flight working group, General Accounting --
13 General Accountability Office, Government
14 Accountability Office, GAO --

15 MR. SCANNELL: I've read them all.

16 MR. HAWLEY: -- and we did in fact take
17 those to heart and in February when I spoke
18 with the Senate Commerce Committee we
19 rebaselined, rebuilt the program taking those
20 issues to heart. So I think there are a number
21 of large-scale issues that you raised and we're
22 not going to resolve here and I respect those

1 opinions. If we just narrow it down to Secure
2 Flight, what we tried to do with Secure Flight
3 is say, yes, we understand there's a lot of
4 issues around a lot of these other things, but
5 for Secure Flight which it seems that the
6 minimum responsibility of the government ought
7 to be that when you identify people who are in
8 fact serious terror risks to flights --

9 MR. SCANNELL: You'd get a warrant and
10 you arrest them.

11 MR. HAWLEY: -- that the government
12 should not let those people onto planes. So
13 that what Secure Flight does is simply watch
14 list matching and nothing else.

15 So what we've tried to do since this
16 rebaselining is to rebuild the system with a
17 very narrow focus, very controlled access to
18 whatever information it gets in all those
19 rules. So what I hope that you, as you
20 evaluate this, as you consider these other
21 large scale issues, please do get into the
22 detail of this Secure Flight rulemaking and

1 that we are in fact attempting to limit to the
2 necessary data and then protect that data and
3 then get rid of that data.

4 MR. SCANNELL: Well, sir, I hope you
5 appreciate I've been criticizing you publicly
6 for years. And I always dislike it when
7 someone criticizes me, but they'll never do it
8 to my fact. So I thought it was important to
9 a, criticize you to your face. I mean, look, I
10 created KipHawleyisanidiot.com.

11 MR. HAWLEY: That's you?

12 MR. SCANNELL: That's me.

13 (Laughter.)

14 MR. SCANNELL: So, I mean --

15 MR. HAWLEY: I'm one of your
16 subscribers.

17 (Laughter.)

18 MR. SCANNELL: Not that we keep track,
19 but I did notice a lot of hits from within your
20 agency, sir. But to that point, this idea of
21 we don't want these people flying, I don't want
22 terrorists or bad guys anywhere. I don't want

1 them on my street. But the fact is, the very
2 notion, sir, of turning our airports into some
3 sort of an air point Charlie is deeply
4 offensive to me.

5 I had a high-paying job as a VP with a
6 software company when CAPS II was announced. I
7 spent so much of my previous life first as an
8 intelligence officer serving in the United
9 States Army and later as a reporter in Eastern
10 Europe, I've seen these bad movies before. And
11 I was so upset by this very notion of getting
12 permission from you and your agency to travel
13 that I quit my job and that I devoted my life,
14 or right now a good chunk of it -- I have two
15 boys now and a wife, but a good chunk of it to
16 make sure that you don't get away with this.
17 And I want you, please, when you leave here,
18 when you go to sleep, please sleep on this.
19 Because you're really not making anyone safer,
20 sir, really. And I appreciate that and I will
21 think on what you've said.

22 MR. HAWLEY: Thank you, likewise.

1 MR. SCANNELL: Thank you.

2 MR. SADLER: Okay. Thank you very
3 much. Speaker number six, please.

4 MR. HARRISON: Good morning, my name is
5 Jim Harrison. I'm an attorney, I'm director of
6 the Identity project that Ed Hasbrouck and Bill
7 Scannell work with and I'm a private attorney.
8 I also represent John Gilmore. You just said
9 that TSA has nothing to do with that project
10 and I think I should clarify what Bill Scannell
11 was just talking about.

12 ATS put out their system of records
13 notice and they've been collecting information
14 and we've been able to make record requests
15 into that systems of records. And what we've
16 found is some pretty appalling stuff. And
17 first just let me clarify, you said, "we have
18 nothing to do with that program." You just
19 said that. That is the program that TSA
20 intends to absorb in the future; is that
21 correct? The international traveling aspect of
22 that.

1 MR. HAWLEY: No, it is not correct.

2 But --

3 MR. HARRISON: All right. Well, what
4 we've found is that the American government is
5 collecting records on people's international
6 travel habits far beyond what they said they
7 were doing. We have records that indicate that
8 customs and boarder protection individuals were
9 making notations as to what books people were
10 carrying with them while traveling, asking them
11 questions as to where they've been, what
12 they've been doing, and what they do for a
13 living and making notations as to that. And
14 that frankly is repulsive that our government
15 is collecting dossiers on its individuals.

16 And it's not just the secondary
17 inspections that are problematic, it's also the
18 passenger name records, the PNRs. Now, the
19 PNRs contain a vast amount of information and a
20 lot of it is redundant and extraneous and
21 unnecessary. But contained within these
22 records, these airline records is information

1 having to do with the person's communication
2 with people abroad, where they're staying
3 abroad, information that they give to the
4 airlines as to how they can be contacted. This
5 is data that goes to the U.S. government.

6 There are restrictions also as to what
7 information can be contained in the
8 international or our boarder crossing data. We
9 found in there records pertaining to EU
10 flights, nothing having to do with crossing our
11 borders. That's very repugnant and in fact
12 probably very violates data privacy protection
13 laws of EU.

14 So my point here is that we are trying
15 to see behind the curtain. We are concerned
16 about the data that you guys are saying that
17 you are going to collect. We can't tell from
18 your NPRM what data you're going to want. The
19 individuals that were speaking here earlier
20 were saying, what data fields are you talking
21 the NPRMs that you want -- I mean, the PNRs, or
22 is it some other field? Would you like to

1 address that?

2 MR. HAWLEY: Sure. I understand your
3 comments. They are not actually related to
4 this rulemaking. Those are other issues
5 outside of the Secure Flight rulemaking. So
6 they're interesting comments, but they're not
7 focused on Secure Flight.

8 The Secure Flight program is
9 specifically designed to limit its activities
10 to just the simple business of, is this person
11 trying to travel on this flight a known
12 terrorist, basically. And it doesn't get into
13 the other stuff that you're talking about.

14 MR. HARRISON: Well, the details -- the
15 devil is in the details here. Are you
16 requesting the PNRs?

17 MR. HAWLEY: No.

18 MR. HARRISON: Okay. Then what are you
19 going to request?

20 MR. HAWLEY: Sir, my friend Don Hubicki
21 will address that.

22 MR. HARRISON: Sure.

1 MR. HUBICKI: In the proposed
2 rulemaking document it talks about the Secure
3 Flight passenger data and there are some tables
4 in there that present the data elements. And
5 specifically the only required data elements to
6 come over to Secure Flight in order to do our
7 function is an individual's full name and the
8 itinerary information so we can prioritize the
9 sooner flights versus the later flights so we
10 can make sure that we process those that are
11 sooner faster.

12 MR. HARRISON: But what is the
13 itinerary information? That is the general
14 definition of PNRs.

15 MR. HUBICKI: PNR is a much broader
16 definition that gets into -- a PNR could
17 include an individual's passport information
18 and all sorts of other things. PNR is a very
19 broad set of data elements. And we are
20 specifically talking about an individual's full
21 name and then itinerary information. Itinerary
22 again is your origin, destination, time of

1 flight, flight number, that sort of thing.

2 MR. HAWLEY: So you raise a very
3 important point which is the terms of art that
4 are in use. The idea that, hey, they're taking
5 the PNR and using it to do watch list matching.

6 In our view that would be overbroad. That we
7 do not in fact suggest that we're going to take
8 the PNR data. What we are saying is that we
9 are going to take information that is included
10 in the information about a person that is the
11 things that Don identified very, very limited
12 and that's all, but it is not the whole PNR
13 data. And we get a lot of confusion about,
14 hey, they're going to either get more
15 information than they need or do something else
16 with the information other than watch lists.

17 MR. HARRISON: That is the concern on
18 our end as well. And we only have the tools at
19 our disposal and that is Privacy Act records
20 requests. And this is the records requests on
21 five individuals including myself that contain
22 so much extraneous stuff and so much

1 information that frankly is records of first
2 amendment activity. The Privacy Act forbids
3 the government's collection of data having to
4 do with citizen's first amendment activity and
5 we are very concerned that you are going to be
6 doing that as well.

7 MR. HAWLEY: We won't. Okay.

8 MR. HARRISON: I have one last point
9 also in that it seems as though you don't just
10 have a mission of aviation safety, it seems
11 that it's now become, as my colleague said, a
12 dragnet for law enforcement. And, you know, by
13 matching watch lists there may be aviation
14 dangers, we don't know what watch lists people
15 are. Now we have checkpoints throughout our
16 country to catch bad people and that's
17 repugnant to Americans.

18 MR. HAWLEY: Thank you. I'll just make
19 one clarification on that. That it's very
20 important also for people to know that when
21 we're talking about the watch list and I
22 mentioned risks, I specifically said, terrorist

1 risks. And there are very strict rules as to
2 what kind of information, who would get on a
3 no-fly list.

4 MR. HARRISON: How do we know that?
5 You say there are strict rules, but how do we
6 know that?

7 MR. HAWLEY: I don't know how you know
8 that. You --

9 MR. HARRISON: No, it's a secret how
10 you get on and off the list.

11 MR. SADLER: Let's not talk over each
12 other, sir. If we're going to ask a question,
13 let's let them answer.

14 MR. HAWLEY: So the no-fly list is a
15 very, very limited list for the purpose of not
16 having people on aircraft who shouldn't be. So
17 that's all that we're talking about here. And
18 I think the rest of the issues are well-known
19 and well discussed. But it's important for the
20 purposes of this conversation and this rule
21 that we limit it to the secure flight program
22 and how we actually intend to implement it.

1 MR. HARRISON: I think if you're going
2 to prevent someone from being able to freely
3 travel in this country you should get a warrant
4 from a judge. Thank you.

5 MR. SADLER: Okay. Thank you, sir, for
6 your comments. Speaker number seven, please.

7 MR. STEINHEL: Thank you. I am Barry
8 Steinhel. I am the director of the technology
9 and liberty project of the American Civil
10 Liberties Union.

11 You know, I grew up a baseball fan in
12 the suburbs of New York, so I'm going to begin
13 by quoting a great hall of fame catcher and
14 philosopher, Yogi Berra who noted about being
15 too many games that it felt like déjà vu all
16 over again. And that's what it feels like
17 today for me, it's déjà vu all over again.

18 The ACLU began actually discussing this
19 question of aviation security and making some
20 recommendations like, for example, something
21 you still have not accomplished which is to
22 screen all cargo going into the aircraft.

1 We first began discussion back before
2 what was then known as the Gore Commission. I
3 will tell you that it's in a prior
4 administrator, then Vice President Gore. I
5 actually met with the FAA in October of 2001 to
6 discuss what was then, I guess, known as the
7 CAPS program. Since then we have been through
8 CAPS, CAPS II, CAPS 2.1, CAPS 2.2, Secure
9 Flight, Secure Flight 2, Secure Flight 3, and
10 what now I suppose could be called Secure
11 Flight 4.0.

12 In all of that time the remarkable
13 thing -- a couple of remarkable things. One,
14 of course, is the inability to actually build
15 this system which does what you say you now
16 want to do which is to be able to match the
17 names of individuals who are boarding aircraft
18 against a watch list. And a watch list which
19 you say is a watch list of known or suspected
20 terrorists. That is a laudable goal. The
21 problem is you've been -- the government has
22 been -- I don't mean this too personally, Mr.

1 Hawley, or anyone else on the rostrum today,
2 the government has been totally incapable of
3 doing that and there are significant questions
4 about whether you are in fact capable of doing
5 that, whether that is a function that can be
6 done. But, you know, if you look at the system
7 that you are now proposing, and I applaud you
8 for recognizing that the kind of Rube Goldberg
9 systems that have been discussed since 2001 are
10 not going to work. That they were overbuilt,
11 they had aspirations that were too great, they
12 were not going to work. I applaud you for the
13 point where you've reached now that you
14 recognize that what you need to do is fairly
15 simple. Although I will point out that even
16 those of us who are not security professionals
17 but civil libertarians have told you that since
18 1999. And I don't say that to say that "we
19 told you so" it's just that this has been
20 obvious from the very beginning now. But
21 beyond that you've got a system which you still
22 don't have right and you don't have right for

1 at least two fundamental reasons. One is that
2 the watch list that you are proposing to match
3 against is bloated, it's inaccurate, it's
4 impossible. The press reports are here that
5 there are between five and 700,000 people on
6 this watch list. Now, we are talking about not
7 only the no-fly list which means you cannot
8 fly, but also the secondary larger list that
9 subjects you to secondary scrutiny.

10 The truth is, if there were five to
11 700,000 terrorists in the United States, we
12 would all be dead. I mean, there aren't five
13 to 700,000 terrorists in the United States,
14 thank God for that. You are looking for a
15 needle in the haystack and you keep pouring
16 more hay on the stack and somehow you think
17 that you are going to find the terrorists. So
18 that's problem number one.

19 Problem number two is you have a system
20 of redress that is almost Soviet in its
21 approach. And I say that as someone who had
22 some experience in working in Eastern Europe

1 and advising some post-Soviet democracies. And
2 I don't say that lightly. When I say "Soviet
3 approach" it is opaque, no one knows how it
4 works, it's done in secret, there is no real
5 opportunity for appeal. As we've pointed out
6 here there is a constitutional right to travel.

7 You don't redress a wrong or grievance with
8 the kind of system that you have.

9 So unless and until you can get those
10 two things right, one you have a watch list
11 that in fact does not -- is capable of actually
12 matching and determining the names of
13 individuals who are real terrorists and we
14 could all go -- you know, we could spend some
15 time here this morning talking about the Robert
16 Johnson problem that I'm sure you're all
17 familiar with from 60 Minutes that they have
18 common names. And secondly that you have a
19 redress grievance that meets constitutional and
20 fundamental fairness grounds. You need to
21 withdraw this proposal. You only get so many
22 "do-overs" in life, you've exhausted your

1 opportunity to do over.

2 MR. HAWLEY: Thank you. That was a
3 clear and thoughtful statement. I'll just give
4 a perspective on two aspects. One is -- or
5 maybe more. On the terror watch list itself,
6 and you correctly identified that the no-fly
7 list is a subset of the larger watch list. And
8 one of the things that we've done over the last
9 year or so is in conjunction with the terrorist
10 screening center is go through every name on
11 the no-fly list and go back and refresh,
12 contact case agents, and go to put a screen on
13 to say, is this person today still worthy of
14 being on the no-fly list. And as a result of
15 that exercise, it essentially was cut in half.

16 So I think the point you raise philosophically
17 is important. I think the point you raise
18 operationally is important. That we have an
19 obligation, if we are going to have watch
20 lists, to make sure that the people on them are
21 the right people and stay current. So I know
22 that's not going to particularly satisfy you,

1 but at least it's a data point that says that
2 we do understand the point you're making and
3 have made some strides in it. And I think they
4 are significant.

5 The other point which is really a
6 personal observation on my part is that the
7 issue of the Robert Johnson problem and then
8 the larger philosophical question about who is
9 on the watch list and how do we know and that
10 stuff is the number one issue that people
11 forget about baggies and shoes, that's the
12 number one issue that is a pain point that I
13 hear about.

14 On the other side one of the things
15 that happens when a no-fly is identified, there
16 is a lot of activity -- a lot of activity. And
17 the first thing we do is establish is this the
18 person who is on the no-fly list. And the
19 second thing is, is this person really should
20 be on the no-fly list. And if the answer is
21 no, we take them off immediately. Just take
22 them off. And so in my experience on this job,

1 and this is just my personal experience, I am
2 aware of only one case where somebody has come
3 to -- you know, gotten to me in an appeals
4 process to say, hey, I don't belong on the no-
5 fly list and then say, yeah, let's get that
6 person off. And my own personal observation
7 is, and there's no way to verify this, so I
8 fully realize this won't be believed by a lot
9 of people. But the fact of the matter is that
10 as one person -- and I'm not responsible for
11 putting people on the no-fly list. I have no
12 vested interest in who's on or who's off. That
13 it actually is, for the people who are on the
14 no-fly list, they really, I think, meet the
15 standard that the public would have if they had
16 visibility to the thing. So I think one of the
17 things that Secure Flight is going to do is it
18 will eliminate the Robert Johnson problem so
19 that the number of people going around saying,
20 hey, I'm on a watch list, they're not on a
21 watch list. You know, I've heard so many
22 stories about this person, that person, first

1 amendment, I spoke out against this or that and
2 I'm on -- no, no way.

3 So I think that once Secure Flight is
4 up and running, that the credibility issue on
5 the validity of the watch list will -- the
6 proof will be in the pudding. I think it will
7 be a good result.

8 And on the "do over" point, I think
9 that what happened with Secure Flight is that
10 right after 911 the fundamental, societal
11 discussion about privacy, about security, about
12 potential tensions in that relationship and
13 Secure Flight was the point at which those came
14 together and were discussed. And one of the
15 problems and I think you identified it, and I
16 agree, is that the program zigged and zagged in
17 the middle of that debate and it has played out
18 in delaying the very simple basic, as you point
19 out, of let's just do the watch list matching.
20 So we are to the point of let's just do the
21 watch list matching and then we will get that
22 in place with the right protections. And I

1 think -- I mean, that's what I hope when I
2 leave this job, Secretary Chernoff leaves this
3 job that we'll have in place a privacy strong
4 regime for no-fly matching. And should you
5 wish to make further comment, please.

6 MR. STEINHEL: Thank you. I appreciate
7 that. But you know half of grossly bloated is
8 still bloated. And that's the problem. I
9 don't know, perhaps you can tell me how many
10 people are now on this list that tell the
11 terrorist screening center. I'm not talking
12 about the pure no-fly, can't get on the plane.
13 I'm talking about the secondary screening list
14 as well. You're going to -- I see by your body
15 language -- tell me that you can't tell me
16 that.

17 MR. HAWLEY: Correct.

18 MR. STEINHEL: But that's the problem.
19 Half of grossly bloated is still bloated. You
20 don't have the list that does this. I don't
21 feel any more secure. I fly all the time. I
22 was on the ground at the airport and really on

1 the runway at LaGuardia Airport on September
2 11th and that plane was turned back because
3 buildings that were not a mile away were hit.
4 I take that very seriously. I don't want to be
5 on a plane with terrorists. But on the other
6 hand, you know, you've got to get down to the
7 operational nitty-gritty here. If you don't
8 have a list, an accurate list and a slim list
9 of terrorists that you can watch, then you are
10 wasting all of our times and you are certainly
11 wasting our liberties. And that remains true
12 whether you go from grossly bloated to just
13 bloated.

14 MR. HAWLEY: So I'm going to agree with
15 you but not -- but I want to explain how I'm
16 agreeing with you so it doesn't become a
17 headline and adopt everything you've said
18 today. But the point about the operational is
19 absolutely valid. That it is incumbent on all
20 of us, on the government side, and it's a
21 shared responsibility among the intelligence
22 and law enforcement as well as us as the

1 executive agent on the no-fly and selectee
2 process to have it be clean and current and
3 fresh and accurate. And as Don mentioned, I
4 think it came up in some of the previous
5 discussions about how are we going to resolve
6 last-minute people who want to take a last-
7 minute, are we operationally going to be able
8 to react the way the current process works?
9 Those are all operational issues. And I think
10 as we talk today about the Secure Flight, here
11 are the rules of the road. Here are the
12 authorities, here is what we are asking for.
13 There is a second and just as important
14 discussion around operationally how are we
15 doing all the things that you mentioned. So I
16 definitely respect the points that you've given
17 and look forward to your written commentary as
18 well. Thank you.

19 MR. STEINHEL: Thank you. Yes, sir.

20 MR. SADLER: Okay. Thank you very
21 much. Speaker number eight, please.

22 MR. DUNLAP: Good morning, Mr. Hawley.

1 My name is Ken Dunlap and I'm from IOTA, the
2 International Air Transport Association.

3 First I would like to thank you for
4 personally being engaged in this debate, it's
5 very important. We would also like to say we
6 very much support DHS and their desire to have
7 a single window for data collection to work
8 towards transmission of airline data once and
9 one time only and to just end the needless
10 duplication of information that's provided to
11 regulators.

12 We also support you in your goal to
13 keep air travel safe and secure. We would like
14 to thank you and the men and women of the TSA
15 for their jobs as the guardians of the borders
16 here. In reviewing Secure Flight there are
17 several matters that warrant some attention
18 that we would like to talk about today. One of
19 them deals with the definition of covered
20 flights. And I would like to limit most of my
21 comments here to international flights and most
22 specifically those flights which we in the

1 industry call "interline flights". And for
2 those of you not familiar with interline
3 flights, aviation is a global business and as
4 we know here in the United States and also
5 abroad it's very difficult sometimes to get a
6 direct flight. In many cases what passengers
7 need to do is fly two different airlines to
8 their ultimate destination. We do this here in
9 the United States and that also is a common
10 travel practice abroad.

11 And one of the issues that comes up is
12 depending on how you read the Secure Flight
13 NPRM, it doesn't affect all airlines equally.
14 And most specifically I would like to speak to
15 flights that are not covered under 1546, but
16 are actually flights that feed into the 1546
17 flights. Those flights would be the ones in
18 which the passenger's ultimate destination is
19 the United States. And it does seem that based
20 on the squishy wording of covered flights that
21 Secure Flight is trying to regulate flights
22 that never land in the United States, where

1 operators never operate within the United
2 States nor have any intention of operating, and
3 it's asking that they change their business
4 practices relating to boarding pass issuance,
5 access to the sterile areas, and also the ID
6 requirements of the passengers.

7 Now, in every case the host nation
8 regulator will have rules for boarding pass
9 issuance, for access to the sterile areas, and
10 also for customer identification. So we do
11 believe that unless the language on what is a
12 covered flight is tightened up that there is
13 going to be a conflict between Secure Flight
14 and the intent of Secure Flight and the host
15 nation security regulations.

16 In terms of data privacy, Secure Flight
17 covers over flights. And we don't believe that
18 the current existing bilateral agreements that
19 cover passenger data specifically address the
20 issues of over flights. So we would suggest
21 that further research be done on that. Also in
22 terms of capturing data on over flights, we are

1 very encouraged by what has become some
2 significantly tight wording on what is defined
3 as an "over flight" which are flights that fly
4 over the lower 48. But we would say that based
5 on our review of international air traffic, you
6 will be capturing a lot of flights whose only
7 crossing into U.S. airspace is over the fields
8 and forests of Maine. So we've heard many
9 times people say, well, we have an interest in
10 capturing those flights that fly over New York
11 and Chicago and Los Angeles, but the fact of
12 the matter is, those airplanes are probably
13 already going to be landing in the United
14 States and that the airplanes that don't fly
15 over those cities will be flying air routes
16 that fly over the northern portion of the
17 United States. So if there is a way of
18 segregating that traffic from the traffic that
19 actually does fly over key cities and key
20 critical infrastructure, we think that that
21 would be important.

22 Next, as we look at the wording of

1 Secure Flight, we also believe that some of the
2 next generation passenger convenience items
3 such as being able to print your boarding
4 passes at home, bring your PDAs into the
5 airport with a boarding pass already printed on
6 it could be affected by this. And that relates
7 to the triggering mechanisms that say a
8 boarding pass cannot be issued unless the
9 Secure Flight flag has been met within that
10 passenger's reservation system.

11 So we would ask that we come back and
12 take a look at ways of allowing greater
13 passenger throughput in some of these next
14 generation technologies to be integrated into
15 that so the two processes are complimentary.

16 And, finally, in terms of technical
17 issues as was noted before there are going to
18 be changes that are being requested to the UN
19 edifact message. We don't believe that those
20 changes can be done in the 60-day period of
21 Secure Flight. So we would like to ask that
22 you go back and review your time

1 implementations in light of the WCO process for
2 making changes to the UN edifact APIS messages.

3 And, finally, with regards to the
4 issues of developing a new bar coded boarding
5 pass, we would like to reiterate that there
6 already is a standard in place for bar coded
7 boarding passes, that there are international
8 standards that are used and with the next
9 generation two-dimensional boarding code we'll
10 be able to achieve those security objectives
11 without TSA having to go and reinvent the bar
12 code for the boarding passes.

13 So, I see my time is up and thank you
14 very much.

15 MR. SADLER: Any questions or comments?

16 MR. HUBICKI: First of all, thank you
17 for the comments. It seems as though you've
18 taken a lot of time to read many of the details
19 and they're meaningful comments as well to us
20 and as always look for more elaboration and
21 details in your written comments. I think that
22 will be very helpful to us.

1 One thing I would also ask for in your
2 comments back in the area is like in interline
3 flights, we understand the complexity of that
4 issue and have spent lots of time discussing
5 that. And I think what would be very helpful
6 is to for comments and feedback to pose
7 alternative suggestions on how we can best make
8 that operation work to minimize impact for air
9 travel yet maintain the level of security that
10 we're trying to achieve with Secure Flight. So
11 we very much look forward to the comments that
12 say this is problematic and here are some
13 alternative ways that we can consider to deal
14 with that matter.

15 I think on many of the other comments,
16 again, we look for the details, the issues of
17 changes to the UN edifact and the 60-day time
18 period. Again, what would be helpful for us is
19 to understand -- you know, I had asked earlier
20 the long haul and the ten and it sounds like
21 you've pointed out specifically that's an area
22 where you're concerned.

1 One of the things that I mentioned
2 previously was that we have put together a lot
3 of the details of what those changes may be
4 early on and have been looking to make that
5 available sooner with our work in conjunction
6 with CBP. So the intent there was to not --
7 was to give a further lead time by making some
8 of that available so carriers can address
9 perhaps those changes now in 2007 rather than
10 later. So I think there are some -- maybe when
11 you address your comments if you could let us
12 know if there are certain things within the
13 context of those details that still you feel
14 aren't covered or addressed that then mean
15 there are subsequent changes later to be made
16 that will be helpful for us as well. I'll
17 leave it at that.

18 Paul, do you want to add anything?

19 MR. LEYH: Yeah, thanks. Ken, just one
20 quick point. On that boarding pass issue
21 itself, and I want to make a point of
22 clarification on this, is that our intent is to

1 send a message to the carrier that says you can
2 issue a boarding pass. So we want to make sure
3 that the carriers can take full advantage of
4 any process that they are looking at for the
5 future whether PDAs and so on. We don't want
6 to encumber the process. Rather we want them
7 to go forward and use whatever means they have
8 for developing that boarding pass process. So
9 ours is just a message to them that allows them
10 then to use whatever means they have for that.

11 MR. DUNLAP: And we understand that.
12 Again, the sensitivity is on those flights that
13 feed into the long haul flights, I mean, those
14 could be very large airlines. They are
15 certainly by no means small airplane operators.
16 It's just that they might be inter-European,
17 intra-Asian, and that they are currently not
18 regulated entities under any U.S. security
19 program. And, again, if there was tightening
20 of the language we could better understand what
21 you mean by a covered flight and we would be
22 sensitive to that.

1 The other issue, if I could just go
2 back to what was said about the UN edifact
3 message. The point in bringing that up is
4 there are standards organizations and world
5 cooperative organizations that have a repeating
6 process and standards bodies that get those
7 messages built and agreed to as an
8 international standard. And that's a longer
9 than a 60-day process. So if you could work
10 with those organizations to find out how much
11 time they need, that would be a very good way
12 of accomplishing your data collection goal.
13 And I would point out that if you don't do
14 that, there are dozens of countries right now
15 that rely on that APHIS message standard and
16 receded that information. And some countries
17 might not need 15 fields, they might need only
18 two. But what they are doing is expecting a
19 certain message in a certain order. And if
20 that order is changed unilaterally then that
21 breaks a foreign government's APHIS collection
22 system. So it would be, you know, no good deed

1 goes unpunished. What happens here might
2 negatively affect someone else's security. So
3 we would just ask you to be sensitive with that
4 and we will work with you to make sure that you
5 understand the processes that are needed to
6 change you and that effect.

7 MR. HUBICKI: And we will. Thank you
8 very much for that.

9 MR. SADLER: Okay. Anything else?
10 (No response.).

11 MR. SADLER: Okay. Thank you.
12 Speaker number nine.

13 (No response.).

14 MR. SADLER: That's it? Yeah, is
15 number two -- someone is registered to speak as
16 number two. Okay. Great. Speaker number two,
17 please.

18 MS. SPROAT: I'm Justine Sproat from
19 Qantas. So I just want to add to my colleague
20 from IATA that we support the comments that
21 they made. I just -- we will be putting in
22 written comments so I will just probably cover

1 the high level, some of the issues we have.
2 One of them is, of course, the 72-hour time
3 frame. The 72-hour requirement, I guess, then
4 requires carriers to build a system in both
5 their reservation and their date years and
6 doesn't quite align with the APHIS predeparture
7 requirements that while there's a suggestion
8 that you can send as early as 72 hours, it's
9 not mandatory. And therefore, I think,
10 probably a more workable solution would be to
11 say to carriers, this is the time frame in
12 which we require the request for a watch list
13 match to be sent, between 72 hours and the
14 securing of the flight doors, but within that
15 time it's up to you when you send it. Then
16 it's, I suppose, for the carrier to deal with
17 if a watch list match result doesn't come back
18 in a timely manner then that's their issue to
19 deal with. But at least it gives the carrier
20 the opportunity to determining their business
21 process as to when they actually want to send
22 that information.

1 The other one I guess on that too is
2 seeking some clarification on the differences
3 between TSA and SDP requirements because
4 initially the watch list match for
5 international flights will be carried out by
6 SDP and that will be based on carriers sending
7 their IQQ or sending information through IQQ.
8 And if carriers have built an IQQ system or
9 interactive system to meet the APHIS
10 predeparture requirements which also meets the
11 watch list requirements, then once TSA takes
12 over that role carriers wouldn't want to see an
13 entire change in the process again. And there
14 are differences between the two in terms of the
15 data requirements and the timing.

16 And on the issue of -- I've spoken
17 already to timing saying PATS sets the limits
18 but optional within. But on the issue of data
19 elements, I think that they need to align with
20 APHIS predeparture data elements or be a subset
21 of those data elements but not different. And
22 there are -- I think it comes up in the

1 itinerary information -- things like the record
2 locator number -- sorry, record locator, I
3 think, the redress number, the nontraveler
4 number, the record sequence, passenger update
5 number, those sorts of things are different.

6 The other issue is a boarding pass on
7 interline or three check flights. Again, this
8 differs from the APHIS predeparture where there
9 is that ability to issue that boarding pass.
10 And I think really the objective here is really
11 to stop the person board as opposed to issuing
12 a boarding pass. So I think allow the boarding
13 pass to be issued and then following SOP to
14 carriers it is the responsibility of the
15 carrier to ensure that that person doesn't
16 actually board the aircraft and have procedures
17 in place to assure that doesn't happen. But
18 not sort of create havoc on the current airline
19 industry and operations in terms of three check
20 passengers.

21 The other one as well is the issue of
22 it being the carriers' responsibility to ensure

1 that travel agents one, collect a name in the
2 reservation and two, put a privacy notice on
3 third-party web sites. It's very difficult for
4 carriers to compel third parties to do
5 anything. And it shouldn't be the carriers'
6 responsibility to do that. If there is
7 something that the government wants then they
8 should mandate directly against the travel
9 agents, but not ask the carriers to ensure
10 third parties comply.

11 There was as well in the notice of
12 proposed rulemaking that says that during
13 operational testing TSA will continue to
14 evaluate the value of data elements required.
15 Certainly we would not want to get as far down
16 the track as operational testing only to find
17 that there was going to be a change in data
18 elements. This is something that would need to
19 be determined by the final rule.

20 As well with the timing, there's
21 mention that the final consolidated use guide
22 won't come out until the final rule. It's

1 published and therefore that makes meeting a
2 time frame of 60 days incredibly difficult.
3 Not just in terms of the different business
4 processes, but equipment lay time and system
5 changes, 60 days is just not enough. And
6 likewise 30 days to provide the implementation
7 plan when you haven't really had an opportunity
8 to digest the final rule and a final
9 consolidated user guide. So we would ask that
10 those timings be reviewed.

11 I think my time is just about up and I
12 do have other things that I would like to
13 write. As I said, I can do that in written
14 comments.

15 MR. HUBICKI: One question that I have
16 and whether you want to answer now or maybe in
17 your comments back, when you talked about the
18 printing of the boarding pass and an
19 alternative to that would be through some SOPs
20 somehow addressing that if somebody has already
21 printed their boarding pass and then later we
22 identify there's somebody who shouldn't have a

1 boarding pass through some SOPs to deal with
2 that. Have you thought through or perhaps
3 could you --

4 MS. SPROAT: Well, currently --

5 MR. HUBICKI: -- how you would handle
6 that.

7 MS. SPROAT: Sorry. Currently -- I'm
8 not sure you're familiar with the Australian
9 system, the advanced passenger processing which
10 essentially when passengers check in their
11 information is sent to the Australian
12 Immigration Department and the Australian
13 Immigration Department makes a decision about
14 whether that passenger is okay or not okay to
15 board and sends back a response to the carrier
16 saying if the passenger is okay or not okay to
17 board. If for any reason that check-in that
18 has not been carried out, then in Qantas' case,
19 for example, we inhibit the gate boarding. So
20 when the passenger turns up at a gate and puts
21 their boarding pass through the gate reader
22 it's rejected and the passenger is prevented

1 from boarding until they're not okay to board
2 is resolved or if the passenger hasn't had
3 their data collected and transmitted, then it's
4 done. Likewise with say three-check passengers
5 that are coming from a carrier that doesn't
6 operate inter-Australia, for example, so
7 they've issued the boarding pass for say
8 Johannesburg-Sydney leg and then the passenger
9 is continuing on Sydney -- sorry, they're going
10 say through Singapore and haven't had their IPP
11 done, but they're going to Singapore on Sydney
12 so they require it done but they have both
13 boarding cards. Likewise they would be picked
14 up at the gate that they either haven't had the
15 IPP processed, or they haven't had their eye
16 response.

17 So, you know, there's a system that's
18 already working today in Australia that allows
19 that to happen and therefore you don't need to
20 inhibit the printing of the boarding card.

21 MR. HAWLEY: I'd like to rephrase what
22 I think I heard to see whether I got your

1 point. And what I think I heard was don't
2 inhibit us or don't fight it out at the
3 boarding pass when you have the ability to stop
4 it at the gate. And then I think I heard you
5 say that you have scanning at the gate that if
6 you had in the system inhibit boarding for this
7 particular boarding pass it would have the same
8 net result and that would work better for the
9 existing business.

10 MS. SPROAT: Yes, there's that and as
11 well before they get to the gate. Airlines,
12 for example, are aware that they have X number
13 of passengers that are joining their flight
14 that are coming from other flights. So we also
15 have a system ability where prior to anyone
16 even turning up at the gate, we can actually
17 pull a list which we call a dot and IPP list
18 that advises us of all passengers that are
19 coming connecting through onto our flight that
20 haven't had their IPP carried out or they
21 haven't had a cleared response. And so you can
22 actually call those passengers up either when

1 they check in at the transfer desk or in the
2 gate lounge. You don't need to wait for them
3 to actually physically board.

4 MR. HAWLEY: Am I allowed to ask for
5 further comment on -- so in other words, take
6 some aspect of this and say, hey, tell us some
7 ideas on it?

8 Okay. So if one of the solutions that
9 you're contemplating is that it would be
10 preferable for the business process to resolve
11 it at the gate rather than at the issuance of
12 the boarding pass -- and this, I guess, would
13 be for the general commentary particularly Ken
14 Dunlap and from his previous point -- that if
15 there were suggestions brought to us to say,
16 here's a business process that works with the
17 way we do business, but gives you U.S.
18 government confidence that in fact we're not
19 going to be letting people on the flight. And
20 if there's a really tight loop to that system
21 that works operationally better I think we'll
22 be extremely interested. And one of the

1 concerns we would have is to leave up to a gate
2 agent boarding flights have that be the
3 deciding whether we're going to have a no-fly
4 on the flight or not does cause us concern
5 which I think is part of the rationale on the
6 thinking about the boarding pass. So if
7 there's a business process way that works
8 better that would change what's in the proposed
9 rule we would be very interested to hear
10 thoughts on that.

11 MS. SPROAT: Because I'm not saying,
12 you know, you need to apply that in terms of --
13 I mean, a great deal of passengers will check
14 in and that's the flight they're taking and you
15 can collect that information at check in or
16 even if you've sent it prior to that. It's
17 really the passengers that are through-check
18 passengers that are coming in on another flight
19 they're remaining airside, they're not having
20 to check in at that port for that flight. And
21 you want to have been able to facilitate their
22 flight by giving them their two boarding --

1 essentially checking them in for both flights
2 and checking their luggage onto the flight. So
3 you want to be able to at least issue the
4 boarding card and then if need be you pick them
5 up when they arrive for that flight. Yeah,
6 we'll get back to you on that with written
7 comments, it's probably easier.

8 MR. HUBICKI: Just two other points I
9 would make that I would mention that I don't
10 think we talked about earlier just to clarify
11 something as well. Excuse me.

12 In terms of operational testing and one
13 of the questions you had raised or comments was
14 the concern that we might change things like
15 data elements later through operational
16 testing. The intent is not to do that just to
17 be clear. The intent is through the rulemaking
18 process to finalize what the data elements
19 would be and then move on into the operational
20 testing, operational or Para operations mode at
21 the program. So we recognize your concerns
22 there and the intent is to try to avoid that

1 situation.

2 And also in terms of the user guide and
3 the concern that it's not final yet. Part of
4 that also relates to the fact that the rule is
5 not final yet. And until we get all of the
6 comments back, hear all of the comments today
7 and then take all of that into consideration,
8 we then need to finalize the rule. And once
9 it's finalized we then can finalize what the
10 guide would be. So --

11 MS. SPROAT: Yeah, and I think the
12 point, just saying right there was that it's
13 understandable that the rule wouldn't be
14 finalized until the NPRM becomes final. But
15 carriers are unlikely to carry out system
16 changes until they actually see the final
17 requirements and otherwise, you know, you're
18 going to end up having to tweak systems or do
19 extra changes when the actual final
20 consolidated user guide comes out. So given
21 that a lot of carriers won't start those
22 changes until it's published, you can see the

1 60-day time frame for implementation becomes
2 quite unachievable.

3 MR. HUBICKI: Understood. And in your
4 comments, if there's a way to point out perhaps
5 if there are out of the many areas that you're
6 concerned about if there are one or two or
7 three that give you more concern in terms of
8 that time frame if you can point those out that
9 will be helpful as well.

10 MS. SPROAT: Yes.

11 MR. SADLER: Okay. Anything else?

12 (No response.)

13 MR. SADLER: Okay. Thank you very
14 much.

15 What we would like to do right now is
16 just take a break about 15 minutes or so. So
17 we'll start back up right around 10 after 11.

18 Thank you.

19 (Brief recess taken at 10:51 a.m.)

20 MR. SADLER: Okay. Thank you everyone.

21 Is there anyone who has registered and hasn't
22 spoken yet at this time?

1 (No response.)

2 MR. SADLER: We got up to eight
3 speakers. Anyone who hasn't registered yet and
4 hasn't spoken?

5 (No response.)

6 MR. SADLER: Okay. With that then what
7 we would like to do is we are probably going to
8 close it up for today. But we would like to
9 offer Kip the opportunity to make some closing
10 remarks before we do that.

11 MR. HAWLEY: Thank you, Steve. And I
12 really thank you everybody for coming this
13 morning. I found it very valuable and some
14 insights that I learned today and that will be
15 definitely included in the record and part of
16 the consideration as this rule moves forward.
17 And I think it is once again emphasized in this
18 hearing the importance of the rule in many
19 contexts and the many difficult issues that
20 come together in the Secure Flight process that
21 we have to get right. And the way that we'll
22 get it right is with the full involvement of

1 the folks around the world who are impacted by
2 it which is really anybody who travels. The
3 suggestions offered today I find valuable as
4 well as we're looking forward to for the
5 follow-up. And I don't believe I have anything
6 more than that. Don.

7 MR. HUBICKI: I would just remind
8 everyone again in terms of the process for
9 submitting comments. You know, they are
10 extremely valuable to us and we would like to
11 see not just comments in terms of point out
12 areas of concern, but also point out
13 suggestions, alternatives, and ideas on how we
14 can make things even better in terms of what's
15 intended. That would be helpful for us. So we
16 look forward to those comments.

17 I believe October 22nd is the time
18 frame for submission of comments and we've gone
19 through what the process is for submitting
20 those. So we very much look forward to that in
21 moving forward.

22 MR. SADLER: Okay. Well, thank you

1 very much for your comments and for your time.

2 It's greatly appreciated. Thank you.

3 (Whereupon, at 11:20 a.m., the meeting
4 was adjourned.)